IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.5440 of 2007

Date of Decision: 19.10.2007

Smt.Shakuntla Shukla ...Petitioner

Vs.

Mrs.Murti Mittal ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.S.K.S.Bedi, Advocate,
for the petitioner.

Vinod K.Sharma, J. (Oral)

This revision petition has been filed against the order passed by the learned courts below vide which application moved by the plaintiff-respondent under Order 39 Rules 1 and 2 of the Code of Civil Procedure has been allowed.

The plaintiff-respondent brought a suit for permanent injunction restraining the petitioner-defendant from interfering or stopping construction being raised by the plaintiff-respondent on her property House No.6352/10/5, Nicholson Road, Ambala Cantt. It was pleaded that the

plaintiff was owner of House No.6352/10/5, Nicholson Road, Ambala Cantt. and towards the northern side of her house, there is a thorough common lane running between the house of the plaintiff and houses No.6352/10/1, 6352/10/1 (part) and 6352/10/2, 3, 4, which was a continuous thorough lane running between the houses. It was also claimed that on an earlier occasion, a suit was filed by the plaintiff for restraining the defendant from raising any construction on the common street and the said suit was decreed and the street in dispute was held to be common street. Appeal against the said judgment and decree was also dismissed.

The suit was contested by the petitioner-defendant on the plea that the said lane was a private property of the defendant and therefore, the plaintiff has no right to open windows, doors or ventilators on the property of the defendant. This plea was raised on the fact that in the sale deed in favour of the plaintiff-respondent street in question was shown to be private property of the petitioner.

Learned courts below on the basis of the previous litigation between the parties came to a prima facie conclusion that the lane in dispute was not the private property of the petitioner-defendant and granted injunction in favour of the plaintiff-respondent. The appeal against the said order also failed.

Learned counsel for the petitioner challenges the order passed by the courts below primarily on the ground that the property being personal property of the petitioner, it is not open to the plaintiff-respondent

to open any window, door or ventilator in the said property as he has independent and exclusive right to enjoy the private property, without, any interference from any one and the learned courts below, therefore, were not right in granting injunction in favour of the plaintiff-respondent. Other contention raised was that the courts below erred in law in granting relief to the plaintiff-respondent which is the final relief claimed in the suit by the plaintiff which by way of interim relief could not be granted.

I have heard the learned counsel for the petitioner and find no force in the contentions raised by him.

In view of the previous litigation between the parties it is prima facie proved on record that the street is a common street and in fact, the petitioner has already been ordered to remove the encroachment made thereon.

The second contention raised by the learned counsel for the petitioner also cannot be accepted. Relief claimed is not by way of mandatory injunction but prohibitory injunction and the courts below were, therefore, justified in granting the relief by way of interim injunction as the very object of the suit will be defeated if such relief is not granted when it is proved on record that plaintiff-respondent has a prima facie case and balance of convenience is also in his favour, further, plaintiff was likely to suffer irreparable loss in case injunction was granted; on the other hand relief can always be claimed by the petitioner at the time of final disposal after parties are allowed to lead evidence.

Learned counsel for the appellant further contends that an order should be passed that in case of dismissal of the suit the plaintiff-respondent shall thereafter close the doors and ventilators. This contention cannot be adjudicated upon at present as the court is bound to grant necessary relief to the parties on available evidence brought on record. At this stage nothing can be said about final order.

No ground is made out to interfere in the impugned orders by this court in exercise of revisional jurisdiction.

Dismissed.

However, keeping in view the long drawn litigation between the parties, the learned trial court is directed to expedite the trial.

(Vinod K.Sharma)
Judge

19.10.2007
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